

Notice of Allowability

Application No.

10/648,828

Examiner

JOHN PAK

Applicant(s)

LINZ ET AL.

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☒ The allowed claim(s) is/are 1-17 [no renumbering necessary].
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

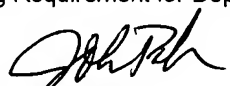
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


JOHN PAK
PRIMARY EXAMINER
GROUP 1620

Claims 1-17 are pending in this application.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Traverso on 9/27/2005.

Rewrite claims 1, 3-5, 8 and 13-15 as follows.

Claim 1 (Currently amended). A rinse-off composition comprising in percent by weight 0.10-10.00 of a dispersion of bismuth oxychloride, 3.50-90.00 of a surfactant, 0.001-0.050 of a dye, 3.00-15.00 of an emollient and 10.00-80.00 of water; said dispersion of bismuth oxychloride comprising bismuth oxychloride platelet particles having a lateral width of 5-25 microns and a thickness of 20-200 nm, said platelet particles being substantially covered by a liquid vehicle and said liquid vehicle being present in an amount sufficient to maintain a stable dispersion and to provide for a facile resuspension.

Claim 3 (Currently amended). A rinse-off composition according to claim 1, wherein the liquid vehicle is present in the dispersion in a concentration of about 20-40% by weight.

Claim 4 (Currently amended). A rinse-off composition according to claim 3, wherein the lateral width of the bismuth oxychloride platelet particles is 10-15 microns and the thickness of said platelet particles is 40-80 nm.

Claim 5 (Currently amended). A rinse-off composition according to claim 4, wherein the bismuth oxychloride is present in the dispersion in a concentration of about 70% by weight and the liquid vehicle is present in the dispersion in a concentration of about 30% by weight.

Claim 8 (Currently amended). A rinse-off composition according to claim 1, wherein said liquid vehicle has properties of viscosity, emolliency, suspension ability, low oxidation potential, pale color and clarity equivalent to octyl-hydroxy stearate, and is slower evaporating than water, has a boiling point greater than 150 °C, is lipophilic, and is liquid at room temperature.

Claim 13 (Currently amended). A rinse-off composition according to claim 1, wherein said surfactant comprises a combination of anionic surfactant and amphoteric surfactant and said emollient comprises silicone fluids.

Claim 14 (Currently amended). A rinse-off composition according to claim 4, wherein said surfactant comprises a combination of anionic surfactant and amphoteric surfactant and said emollient comprises silicone fluids.

Claim 15 (Currently amended). A rinse-off composition according to claim 6, wherein said surfactant comprises a combination of anionic surfactant and amphoteric surfactant and said emollient comprises silicone fluids.

The following is an examiner's statement of reasons for allowance:

The claimed invention is directed to a rinse-off composition comprising 0.1-10 wt% of a dispersion of bismuth oxychloride, surfactant, dye, emollient and water, wherein the bismuth oxychloride in the dispersion comprises platelet particles having a lateral width of 5-25 μm and a thickness of 20-200 nm, said platelet particles being substantially covered a liquid vehicle, said liquid vehicle being present in an amount sufficient to maintain a stable suspension and to provide for facile resuspension. See claim 1 for complete details.

A rinse-off composition is a composition that is rinsed off after application. See specification paragraphs 3-4, 16-18. Depending on the ingredients, a rinse-off product can provide a user's skin with a "lustrous appearance and a silky feel" (specification paragraphs 3-4) and have an attractive appearance and good rinse/feel (specification paragraph 16). **Mitsui** is cited to establish the ordinary skilled artisan's understanding of rinses in a shampoo product (pages 410-412).

The prior art fails to disclose or suggest the claimed invention, as presently amended. The following is a discussion of the state of the art.

A publication by the same inventive entity as here, **US 2004/0076699** (which does not qualify as prior art), discloses Biron[®] Liquid Silver (paragraph 39). However, the claims in the publication fail to raise any double patenting issues. **Anselmann et al.** (US 6,743,285) disclose a pigment mixture of bismuth oxychloride dispersion and a second pearlescent pigment (claims 1-15). Diverse bismuth oxychloride dispersion products, including Biron[®] products, are disclosed, but Anselmann et al. disclose different optical properties from such products, ranging from transparent to hiding (column 2, lines 2-11). Biron[®] Liquid Silver is not disclosed, platelet particles of 5-25 μm lateral width and 20-200 nm thickness are not disclosed, and platelet particles being substantially covered by a liquid vehicle, which is present in an amount sufficient to maintain a stable dispersion and to provide for facile resuspension is not disclosed. All of the example formulations are directed to products that would not be considered rinse-off compositions (Examples 1-11).

Cao (US 6,579,357) discloses bismuth oxychloride crystals which are discontinuously coated with hydrous iron oxide (column 2, lines 8-10), which affects the color of the resultant effect pigment, e.g. gold to dark brown (column 2, lines 1-5 & 54-57; column 3, lines 1-6). Use in rinse-off applications is disclosed (column 4, lines 23-28). However, Cao fails to disclose or suggest 0.1-10 wt% of a dispersion of bismuth oxychloride platelet particles of 5-25 μm lateral width and 20-200 nm thickness in a rinse-off formulation, as specified by the instant claimed invention. Cao also fails to

disclose such platelet particles being substantially covered by a liquid vehicle, which is present in an amount sufficient to maintain a stable dispersion and to provide for facile resuspension.

Grollier et al. (US 5,000,937) disclose a transparent cosmetic composition for protection against infrared radiation, which contains bismuth oxychloride of particles sized preferably less than 40 μm (column 2, lines 12-24; see also claim 1). A commercial bismuth oxychloride product, PEARL GLO, is used in a cream (column 7, Example 4). Not only do Grollier et al. fail to disclose or suggest the bismuth oxychloride platelet particle features and the liquid vehicle features of the instant claimed invention, it is likely the case that Grollier's invention is not a rinse-off composition, as one of ordinary skill in the art would understand it, due to the fact that the objective of protection against infrared radiation requires continued contact with the skin (see e.g. in Grollier et al., column 5, lines 60-63).

Shiloach et al. (US 6,906,015, not prior art) disclose a cosmetic composition that contains bismuth oxychloride as a particulate optical modifier (e.g., claim 19). Biron[®] Liquid Silver is disclosed (column 13, lines 10-21), but Shiloach's inventions require additional features – for example, even a composition that contains bismuth oxychloride in ethylhexyl hydroxystarate is considered to be *outside* the scope of Shiloach's invention (see columns 17-18, Comparative Example 6). Further, even though the thickness of the optical modifier platelet particles is "considered to be a separate

parameter" (column 12, lines 62-63), none of Shiloach's claims recite platelet thickness or the features of the instant claims' liquid vehicle. Consequently, one having ordinary skill in the art would not determine that the instant application contains claims for the same patentable invention as Shiloach's claims, within the meaning of 37 CFR 1.601(n).

Furthermore, applicant's specification discloses the difficulty of mimicking the sharp and brilliant luster obtained with the bismuth oxychloride dispersion (paragraph 16), even with another bismuth oxychloride (Biron[®] LF-2000) or small particle sized mica (Timiron[®] MP-1005, 3-10 μ m median size). See specification page 9, Pearlescence Ranks of 1 for the invention compositions (1 is the highest pearlescence rank), 3 for comparative compositions formulated with Timiron[®] MP-1005, and 5 for comparative compositions formulated with Biron[®] LF-2000 (6 is the lowest pearlescence rank) are disclosed.

For the foregoing reasons, the evidence of nonobviousness outweighs the evidence of obviousness, if any; and the claimed invention as a *whole*, is deemed to be patentable over the prior art. The prior art fails to adequately disclose or suggest the claimed invention as a whole.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1616

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**.

The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on **(571)272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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